



# House of Representatives

**File No. 805**

General Assembly

January Session, 2013

**(Reprint of File No. 304)**

Substitute House Bill No. 6549  
As Amended by House Amendment  
Schedules "A" and "B"

Approved by the Legislative Commissioner  
May 13, 2013

**AN ACT ESTABLISHING A MEDIATION PROGRAM FOR CERTAIN  
INSURANCE POLICY CLAIMS AND CONCERNING REQUIREMENTS  
FOR PERSONS PERFORMING REPAIRS, REMEDIATION OR  
MITIGATION PURSUANT TO A LOSS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2013*) (a) (1) The Insurance  
2       Department may establish a mediation program for any open claim for  
3       loss or damage to personal or real property that arises under an  
4       insured's (A) personal risk insurance policy, as defined in section 38a-  
5       663 of the general statutes, other than a private passenger nonfleet  
6       automobile insurance policy, (B) condominium association master  
7       policy under section 47-83 of the general statutes, or (C) unit owners'  
8       association property insurance policy under section 47-255 of the  
9       general statutes, as a result of a catastrophic event for which the  
10      Governor has declared a state of emergency. Any company licensed to  
11      write the lines of insurance set forth in subparagraphs (A) to (C),  
12      inclusive, of this subdivision shall participate in the mediation  
13      program. For purposes of this section, "claim" means any dispute  
14      between an insured and such insured's insurer arising from such

15 catastrophic event in which the difference between the position of the  
16 parties for the actual cash value or the amount of loss is five thousand  
17 dollars or more, notwithstanding any applicable deductible, except  
18 that the parties may agree to mediate a dispute involving a lesser  
19 amount.

20 (2) This section shall not apply to any claim (A) made under a flood  
21 insurance policy issued by the National Flood Insurance Program, (B)  
22 for which coverage is in dispute, or (C) with respect to which coverage  
23 has been exhausted.

24 (b) The Insurance Commissioner shall designate an entity as the  
25 commissioner's designee to carry out the mediations pursuant to this  
26 section. The insurer shall pay the mediation fee to the designated  
27 entity not later than ten business days after such insurer receives an  
28 invoice for such mediation from such entity. The insurer shall not be  
29 responsible for any costs incurred by an insured including, but not  
30 limited to, costs incurred for advisors, representatives, attorneys or  
31 public adjusters.

32 (c) The mediation shall be conducted in accordance with procedures  
33 established by the designated entity and approved by the  
34 commissioner. The commissioner shall not designate an entity as the  
35 commissioner's designee unless:

36 (1) Such entity agrees (A) that the commissioner shall oversee the  
37 operational procedures of such entity with respect to the  
38 administration of the mediation program, (B) that the commissioner  
39 shall have access to all systems, databases and records related to the  
40 mediation program, and (C) to make reports to the commissioner in a  
41 form and manner prescribed by the commissioner;

42 (2) Such entity's procedures require that (A) the parties agree, in  
43 writing, prior to the mediation that statements made during the  
44 mediation are confidential and will not be admitted into evidence in  
45 any civil action concerning the claim, except with respect to any  
46 proceeding or investigation of insurance fraud, (B) a settlement

47 agreement reached in a mediation shall be transcribed into a written  
48 agreement, on a form approved by the commissioner, that is signed by  
49 the insured and a representative of the insurer with the authority to do  
50 so, and (C) a settlement agreement prepared during a mediation shall  
51 include a provision affording the insured a right to rescind the  
52 agreement within five business days after the date such agreement is  
53 reached, provided the insured has not cashed or deposited any check  
54 or draft disbursed to the insured for the disputed matters as a result of  
55 such agreement; and

56 (3) Such entity's procedures provide that (A) the mediator may  
57 terminate a mediation session if the mediator determines that either  
58 the insured or the insurer's representative is not participating in the  
59 mediation in good faith, or if even after good faith efforts, a settlement  
60 cannot be reached, (B) the designated entity may schedule additional  
61 mediation sessions if it believes the sessions may result in a settlement,  
62 (C) the designated entity may require the insurer to send a different  
63 representative to a rescheduled mediation session if the first  
64 representative has not participated in the mediation in good faith, and  
65 any fee for such other representative shall be paid by the insurer, and  
66 (D) the designated entity may reschedule a mediation session if the  
67 mediator determines that the insured is not participating in good faith,  
68 but only if the insured pays the entity's fee for the mediation.

69 (d) An insured's right to request mediation pursuant to this section  
70 shall not affect any other right the insured may have to redress the  
71 dispute after the completion of the mediation, including any remedies  
72 specified in the insurance policy or any right provided by law, unless a  
73 settlement agreement for the dispute has been entered into and the  
74 insured did not rescind such agreement as provided under  
75 subparagraph (C) of subdivision (2) of subsection (c) of this section.

76 (e) The commissioner may adopt regulations, in accordance with the  
77 provisions of chapter 54 of the general statutes, to implement the  
78 provisions of this section. Such regulations shall include, but not be  
79 limited to, (1) the form and manner of notification by the insurer to an

80 insured of the right to mediation, (2) the forms and procedures for an  
81 insured or an insurer to request a mediation proceeding, and (3) the  
82 requirements for an insurer's participation at the mediation hearing.

83 Sec. 2. Section 38a-313a of the general statutes is repealed and the  
84 following is substituted in lieu thereof (*Effective October 1, 2013*):

85 (a) (1) Prior to commencing any repair, remediation or mitigation  
86 pursuant to a loss occurring on or after [July 1, 2012, and covered]  
87 October 1, 2013, under a personal risk insurance policy, as defined in  
88 section 38a-663, or a commercial risk policy, as defined in section 38a-  
89 663, the person who will perform the repair, remediation or mitigation  
90 shall: [provide an]

91 (A) Provide an insured with a written notice that indicates the scope  
92 of the work to be completed and the estimated total price. Such notice  
93 shall not be required for [(1)] (i) any repair of an automobile that is  
94 subject to this chapter, or [(2)] (ii) any repair that is subject to chapter  
95 400; [.] and

96 (B) Include, in any contract or document in connection with such  
97 repair, remediation or mitigation that authorizes an insurer to make a  
98 payment directly to the person performing such repair, remediation or  
99 mitigation, a provision that discloses to the signatory, in not less than  
100 twelve-point type immediately above the signature line, that the  
101 insured has the right to be named as a joint payee on the payment  
102 instrument.

103 (2) No such contract or document shall include any provision that  
104 creates a power of attorney or waives the signatory's or insured's legal  
105 rights against the person performing such repair, remediation or  
106 mitigation.

107 (b) If the person performing the repair, remediation or mitigation or  
108 a contract or document in connection with such repair, remediation or  
109 mitigation fails to [provide the written notice in accordance with  
110 subsection (a) of this section to an insured] comply with the

111 requirements set forth in subsection (a) of this section, any contract  
112 between such person and such insured for, or document in connection  
113 with, such repair, remediation or mitigation shall be void.

114 (c) As used in this section, "remediation" includes, but is not limited  
115 to, cleaning services.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	38a-313a

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

This bill requires the Insurance Department to establish an insurance mediation program for claims from a catastrophic event. The bill specifies that the department designate an entity (presumably a private, third party) to carry out the mediations and that the insurer must pay the mediation fee. The bill also specifies certain notification requirements. There is no state or municipal fiscal impact.

House "A" made modifications to the mediation program in the underlying bill. The amendment had no fiscal impact.

House "B" added to notification requirements noted above. The amendment had no fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sHB 6549 (as amended by House “A” and “B”)\******AN ACT ESTABLISHING A MEDIATION PROGRAM FOR CERTAIN INSURANCE POLICY CLAIMS ARISING FROM A CATASTROPHIC EVENT.*****SUMMARY:**

This bill allows the Insurance Department to establish a program to mediate disputes between insureds and insurance companies to settle certain claims that involve losses from catastrophic events for which the governor has declared a state of emergency. The program must address any dispute arising from a catastrophic event where the difference between the parties’ positions on the actual cash value or amount of the loss is \$5,000 or more, notwithstanding any applicable deductible. The parties may agree to mediate a dispute involving a smaller amount.

The bill requires the commissioner to designate an entity as his designee to implement the program and specifies the conditions an entity must meet to be designated. The mediation must be conducted in accordance with procedures the entity establishes that are approved by the insurance commissioner.

Insurers licensed to provide insurance for the affected lines must participate in the program. The insurer must pay a mediation fee to the designated entity within ten business days after it receives an invoice for the mediation from the entity. The insurer is not responsible for any cost incurred by an insured, including costs for advisors, representatives, attorneys, or public adjusters.

The bill allows the commissioner to adopt implementing regulations and specifies what they must contain.

An insured's right to request mediation does not affect any other right he or she may have to redress the dispute after completing the mediation, including any remedies specified in the insurance policy or any right provided by law. However, if the insured and the insurer settle the case and the insured does not rescind his or her agreement, this provision does not apply.

The bill expands the scope of the law that requires that a person who performs repair, remediation, or mitigation services under certain insurance policies provide notice to the insured as to the scope of the work and its estimated price.

\*House Amendment "A":

1. allows rather than requires the department to establish the mediation program and adopt regulations;
2. excludes cases from the program where coverage has been exhausted, but allows cases where the insurer has alleged fraud to participate in it;
3. requires the insurer to pay the mediation fee in ten, rather than five, business days;
4. gives the insured five, rather than three, business days to rescind a settlement; and
5. makes related changes.

\*House Amendment "B" adds the provisions on notices by service providers to insureds.

EFFECTIVE DATE: October 1, 2013

**MEDIATION PROGRAM**

***Affected Policies***

The bill applies to claims under a:



1. personal risk insurance policy, other than private passenger nonfleet automobile insurance,
2. condominium association master policy, or
3. condominium unit owners' association property insurance policy.

The mediation program does not apply to claims:

1. for which coverage is in dispute or when coverage has been exhausted or
2. made under a flood policy issued by the National Flood Insurance Program.

### ***Administrative Entity***

Under the bill, the commissioner must not designate an entity to administer the program unless it agrees to:

1. let the commissioner oversee its operational procedures regarding the administration of the program,
2. give the commissioner access to all of the systems, databases, and records related to the mediation program, and
3. report to the commissioner in a form and as he prescribes;

In order to be designated, the entity's procedures must require that:

1. the parties agree before the mediation, in writing, that statements made in the mediation are confidential and will not be admitted into evidence in any civil action on the claim, except with respect to proceedings or investigations of insurance fraud;
2. a settlement reached in a mediation must be transcribed into a written agreement, on a form approved by the commissioner, that is signed by the insured and an authorized representative of the insurer;

3. a settlement prepared during a mediation must allow the insured to rescind it within five business days after it is reached, so long as he or she has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the settlement; and
4. the mediator may terminate a mediation session upon determining that the insured or the insurer's representative is not participating in good faith. If, even after good faith efforts, a settlement cannot be reached, the entity may (a) schedule additional sessions if it believes they will result in a settlement; (b) require the insurer to send a different representative to a rescheduled mediation session if the first one did not participate in good faith, and pay any fee for the other representative; and (c) reschedule a mediation session if the mediator determines that the insured is not participating in good faith, but only if the insured pays the entity's fee for the mediation.

### **Regulations**

The implementing regulations must at least include:

1. the form and manner of notification by the insurer to an insured of the right to mediation,
2. the forms and procedures for an insured or insurer to request mediation, and
3. the requirements for an insurer's participation at the mediation hearing.

### **NOTICES BY SERVICE PROVIDERS**

By law, people who provide repair, remediation, or mitigation services for losses that are covered by a personal risk insurance or commercial risk policy must give the insured, before any work begins, written notice of the work to be completed and its estimated total price. The requirement does not apply to repairs to an automobile covered by insurance or repairs covered by the laws governing home

improvement contractors.

The bill additionally requires that any contract or document in connection with these services that authorizes an insurer to directly pay the service provider include a provision that discloses to the signatory that the insured has the right to be named as a joint payee on the payment instrument. This disclosure must be in at least 12-point type and immediately above the signature line.

The bill prohibits the contract or document from including any provision that creates a power of attorney or waives the signatory's or insured's legal rights against the person performing the work.

By law, if the person performing the mitigation does not comply with the notice requirement, any contract for the service between that person and the insured is void. The bill extends this provision to its requirements.

#### **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/14/2013)